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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,094	09/29/2003	Laurence J. Cull	P03231	2170
23702	7590	09/05/2006	EXAMINER	
Bausch & Lomb Incorporated One Bausch & Lomb Place Rochester, NY 14604-2701			DEAK, LESLIE R	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/674,094	Applicant(s) CULL ET AL.	
	Examiner Leslie R. Deak	Art Unit 3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 30 June 2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,963,131 to Worrich in view of US 4,416,772 to Sato et al.

In the specification and figures, Worrich discloses the device substantially as claimed by applicant. With regard to claim 1, Worrich discloses an elongated connector or waste line 79 that is connected to an ophthalmic pump cartridge 15 that provides a conduit for aspirated matter to flow from the cartridge to waste bag 100 (see FIG 2, column 6, lines 15-18). The connector or waste line is structured to connect to cartridge 15 (see FIG 2) with a second end in bag 100 (see column 6, lines 15-18).

Wortrich fails to disclose that the second end of the waste line or connector comprises a notched end. However, Sato discloses an apparatus for removing fluid from a patient comprising a connector line 21 that has a first end connected to a pumping apparatus and a second end positioned within the end of a collection bag 20 (see FIGS 4-5). The connector line 21 has a main body with slit elements or notches 22 disposed at the bag end of the connector line in order to provide a fluid passageway through the connector line 21 even when the bag 20 collapses around the line 21 due to negative pressure within the bag (see column 3, lines 6-25).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the connector line disclosed by Wortrich with a notched end as disclosed by Sato in order to provide a fluid flow pathway through the connector line even when the bag collapses around the connector line, as taught by Sato.

With regard to applicant's claim limitations drawn to the operation of the notch, such a statement is held by the examiner to be a statement of the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the instant case, the combination of Wortrich and Sato is capable of operating as claimed by applicant, since Sato teaches that the notched design prevents the bag from sealing against the conduit upon collapse. Applicant's claim language directed to the actions of the surgeon during the surgery fail to set forth any structural limitations that differentiate

Art Unit: 3761

the structure of the instantly claimed invention from that of the prior art. Therefore, the prior art cited above meets the limitations of the claims.

With regard to claim 4, Sato discloses that the connector line may comprise two notches formed in opposing sides of the second end (see 22b in FIG 6).

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,963,131 to Worrich in view of US 4,416,772 to Sato et al, further in view of US 4,930,997 to Bennett.

In the specification and figures, Worrich and Sato disclose the device substantially as claimed by applicant (see rejection above), but are silent as to the manner in which the connector and the bag are sealed together.

Bennett discloses a medical suction apparatus with a collection tube 23 that connects suction device 20 to reservoir bag 120 (see FIG 1). The collection tube is heat sealed to collection bag 120 via sealing seam or ring 123 in order to create a tight seal without risk of liquid leakage (see column 15, lines 1-10). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to seal the connector tubes and collection bags disclosed by Worrich and Sato via a heat seal with a sealing ring as disclosed by Bennett in order to create a seal without risk of liquid leakage, as taught by Bennett.

### ***Response to Arguments***

5. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

6. Applicant also argues that the office action mailed 4 April 2006 should not have been made final, since Applicant's amendments did not necessitate a new ground of rejection. However, Examiner notes that Applicant's amendments to the claims recited new elements of the invention, in particular, a pump cartridge and the location of the notch, thereby changing the scope of the claims. As such, the claims warranted new consideration and the rejection was properly made final.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

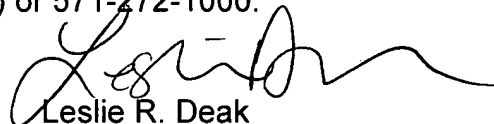
- a. US 3,781,941 MacFarland
  - i. Vacuum attachment with notched ends to prevent sealing effect and pressure drop

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie R. Deak whose telephone number is 571-272-4943. The examiner can normally be reached on M-F 7:30-5:00, every other Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leslie R. Deak  
Patent Examiner  
Art Unit 3761  
24 August 2006